

National E-Governance Services Limited, Bengaluru

**Replies and Corrigenda to Pre-bid Legal Queries raised separately along with other queries by bidder(s)
Part - 2**

Reference: No RFP. No: NESL/IU /2019/001 Date: 7th August, 2019

Sl. no	Pg. No.	Original Clause	Suggested Modification	NESL Reply	Corrigendum
1	9	2. Project Duration: NESL will release an order on successful bidder for the activity of Maintenance and Support of the existing IU Software and Design, Development, Installation, Integration and Configuration of additional features and functionalities, initially for a period of Three years from the date of release of order. However, NESL reserves the right to extend this period by another 2 years (maximum), for the said activities with the prices as quoted by the bidder as given in Section – V, Phase – 2, keeping other terms and conditions unchanged.	2. Project Duration: NESL will release an order on successful bidder for the activity of Maintenance and Support of the existing IU Software and Design, Development, Installation, Integration and Configuration of additional features and functionalities, initially for a period of Three years from the date of release of order. However, NESL reserves the right to extend this period by another 2 years (maximum), for the said activities with the prices as quoted by the bidder as given in Section – V, Phase – 2, keeping <u>reed unchanged mutually agreed.</u> other terms and conditions	No change in tender terms	N.A.
2	10	10. The IPR of the software developed shall vest with NESL perpetually. The bidder must submit an undertaking to this effect as per format given in Annexure - A.	10. The IPR of the software developed shall vest with NESL perpetually. The bidder must submit an undertaking to this effect as per format given in Annexure – A.	No change in tender terms.	N.A.
3	16	Before placement of order, the successful bidder is required to sign a Service Agreement (SA), a Mutual Non-Disclosure Agreement (MNDA), Deed of Indemnity with NESL and any such agreements as required. The terms and conditions of these agreements would be mutually	Before placement of order, the successful bidder is required to sign a Service Agreement (SA), a Mutual Non-Disclosure Agreement (MNDA), Deed of Indemnity with NESL and any such agreements as required. The terms and conditions of these agreements would be mutually decided <u>agreed</u> , before	Please refer corrigendum.	Before placement of order, the successful bidder is required to sign a Service Agreement (SA), a Mutual Non-Disclosure Agreement (MNDA), Deed of Indemnity with NESL and any such agreements as

		decided, before placement of order/s.	placement of order/s.		required. The terms and conditions of these agreements would be mutually agreed, before placement of order/s.
		Section – III: Special Conditions of Contract (SCC)			
4		<p>1.5 The bidder should exercise utmost care to quote the correct percentage of applicable GST. In case, due to any error/ oversight, the GST rate quoted by the bidder is different than the actual GST rate as per the tariff, the bidder will not be permitted to rectify the error/oversight. The orders/ contract will be placed with the GST rate quoted by the bidder or actual tariff rate, whichever is LOWER. The difference amount payable, if any, between the quoted GST rate and actual tariff rate shall be borne by the bidder by adjustment in the basic price.</p>	<p>1.5 The bidder should exercise utmost care to quote the correct percentage of applicable GST. In case, due to any error/ oversight, the GST rate quoted by the bidder is different than the actual GST rate as per the tariff, the bidder will not be permitted to rectify the error/oversight. The orders/ contract will be placed with the GST rate quoted by the bidder or actual tariff rate, whichever is LOWER. The difference amount payable, if any, between the quoted GST rate and actual tariff rate shall be borne by the bidder<u>NESL</u> by adjustment in the basic price.</p>	No change in tender terms.	N.A.
5	17	<p>2 Completeness Responsibility: Notwithstanding the scope of work, supply and services stated in bid document, engineering or technical services which might not be even specifically mentioned under the scope of supply of the bidder and which are not expressly excluded there from but which – in view of the bidder - are necessary for the performance in accordance with the specifications are treated to be included in the bid and has to be performed by bidder. The services which are over & above the scope of supply specified in</p>	<p>2 Completeness Responsibility: Notwithstanding the scope of work, supply and services stated in bid document, engineering or technical services which might not be even specifically mentioned under the scope of supply of the bidder and which are not expressly excluded there from but which – in view of the bidder - are necessary for the performance in accordance with the specifications are treated to be included in the bid and has to be performed by bidder. The services which are over & above the scope of supply specified in the Schedule of Requirements</p>	No change in tender terms.	N.A.

		the Schedule of Requirements may be marked as "Additional Items" in Section - V.	may be marked as "Additional Items" in Section - V.		
6	19	<p>6. Warranty:</p> <p>6.1 The supplier shall warrant that the software developed and deployed shall be free from all defects and faults, shall be of the highest grade and consistent with the established and generally accepted standards of the type ordered and shall perform in full conformity with the requirements and technical diagrams as given by NESL from time to time.</p> <p>The supplier shall be responsible for any defect that may develop, arising from faulty algorithms/design, errors, bugs, inadequate quality to meet requirements and/or otherwise, and for any other reason attributed to the supplier. In any of these cases, the supplier shall remedy such defects/bugs at his own cost when called upon to do so by NESL, who shall state in writing the nature of such defect/bug or faulty functionality of the software.</p> <p>6.2 Supplier shall have no liability in the case of breach of the above warranties due to</p> <p>(i) Use of the Deliverables by NESL on any environment (hardware or software) other than the environment stipulated in this RFP.</p> <p>(ii) Use - either in combination or isolation, of some or all of the Deliverables by NESL, other than that stipulated in this RFP.</p> <p>6.3 In case of breach of this warranty by the supplier, NESL shall have the right to</p>	<p>6. Warranty:</p> <p>6.1 The supplier shall warrant that the software developed and deployed shall be free from all defects and faults, shall be of the highest grade and consistent with the established and generally accepted standards of the type ordered and shall perform in full conformity with the requirements and technical diagrams as given by NESL from time to time.</p> <p>The supplier shall be responsible for any defect that may develop, arising from faulty algorithms/design, errors, bugs, inadequate quality to meet requirements and/or otherwise, and for any other reason attributed to the supplier. In any of these cases, the supplier shall remedy such defects/bugs at his own cost when called upon to do so by NESL, who shall state in writing the nature of such defect/bug or faulty functionality of the software.</p> <p>6.2 Supplier shall have no liability in the case of breach of the above warranties due to</p> <p>(i) Use of the Deliverables by NESL on any environment (hardware or software) other than the environment stipulated in this RFP.</p> <p>(ii) Use - either in combination or isolation, of some or all of the Deliverables by NESL, other than that stipulated in this RFP.</p> <p>6.3 In case of breach of this warranty by the supplier, NESL shall have the right to obtain from the supplier:</p>	No change in tender terms.	N.A.

		<p>obtain from the supplier:</p> <p>a. the re-performance of the service or the correction or replacement of the affected deliverable that provides similar functionality or</p> <p>b. if both parties mutually determine that such remedies are not practicable, a refund of the project fees allocable to that portion of the Deliverable will be due to NESL if already paid by NESL.</p> <p>6.4 NESL warrants that all software, information, data, materials, and other assistance ("Customer Materials") provided by it to the supplier will not infringe the intellectual property rights of any third parties. Further, NESL has the rights and is otherwise authorized to deliver the Customer Material and to grant the rights and licenses to the supplier as contemplated in the RFP/Agreement</p>	<p>a. the re-performance of the service or the correction or replacement of the affected deliverable that provides similar functionality or</p> <p>b. if both parties mutually determine that such remedies are not practicable, a refund of the project fees allocable to that portion of the Deliverable will be due to NESL if already paid by NESL.</p> <p>6.4 NESL warrants that all software, information, data, materials, and other assistance ("Customer Materials") provided by it to the supplier will not infringe the intellectual property rights of any third parties. Further, NESL has the rights and is otherwise authorized to deliver the Customer Material and to grant the rights and licenses to the supplier as contemplated in the RFP/Agreement</p>		
7	19	<p>8. Inspection and Acceptance Criteria:</p>	<p>8. Inspection and Acceptance Criteria:</p> <p><u>Any such audit shall be conducted expeditiously, efficiently, and at reasonable business hours after giving due notice to the Supplier which shall not be less than 10 days. The cost of such audit shall be borne by the NESL. NESL shall not have access to the proprietary data of, or relating to, any other customer of Supplier, or a third party or Supplier's cost, profit, discount and pricing data. The audit shall not be permitted if it interferes with Supplier's ability to perform the services in accordance with the service levels, unless the NESL relieves Supplier from meeting the applicable service levels. NESL will ensure that the</u></p>	<p>Please note that this para refers to technical inspection of s/w developed and does not refer to audit of system(CAG or otherwise). No third party will be involved. No change in tender terms.</p>	N.A.

			<u>auditor (except CAG) appointed to conduct the audit will not be the competitor of Selected Supplier and will be bound by confidentiality obligations</u>		
8	20	<p>9. Payments: The supplier can raise invoices towards the services provided by them, at the end of every month. The supplier should raise invoice as per the details agreed upon mutually in the SoW and on approval of NESL. For reasonable estimation of person-months deployed on the project, NESL may use the data of the deployed personnel, from biometric attendance system installed at NESL. For estimation of off-site person-months, the supplier should make available the attendance data from their own attendance system. NESL team will make a reasonable assessment of person-months put-in by the supplier. The actual person-months and the work output will be compared with that agreed by the supplier vide the SoW for estimating the payable amount. 100 % of the payable amount thus calculated will be paid within 60 days from the date of submission of invoice. The recoveries and/ or penalties - if any, will be recovered from amount payable to supplier.</p>	<p>9. Payments: The supplier can raise invoices towards the services provided by them, at the end of every month. The supplier should raise invoice as per the details agreed upon mutually in the SoW and on approval of NESL. For reasonable estimation of person-months deployed on the project, NESL may use the data of the deployed personnel, from biometric attendance system installed at NESL. For estimation of off-site person-months, the supplier should make available the attendance data from their own attendance system. NESL team will make a reasonable assessment of person-months put-in by the supplier. The actual person-months and the work output will be compared with that agreed by the supplier vide the SoW for estimating the payable amount. 100 % of the payable amount thus calculated will be paid within 6030 days from the date of submission of invoice. The recoveries and/ or penalties - if any, will be recovered from amount payable to supplier. <u>All payments due for more than thirty (30) days will attract an interest at the rate of 2 percent per month on the invoice amount calculated from the date the payment became due until the recovery is made in full with interest. Without prejudice to the other rights available, Supplier also</u></p>	No change in tender terms.	N.A.

			<p><u>reserves the right to withhold the provision of services till such time all the payments due to it under this Agreement have been made by NESL and any such withholding by the Supplier shall not be treated as breach by it of the provisions of this Agreement.</u></p> <p><u>All fees payable to Supplier are exclusive of any sales, use, value added tax, service , GST or taxes of a similar nature measured by the services, deliverables or charges thereon, imposed by any applicable taxing jurisdiction and where such taxes are applicable, NESL shall be responsible to pay or reimburse Supplier the amount of such taxes. Where applicable, Supplier shall invoice such taxes as a separate line item in applicable invoices and shall pay such amount of tax to the appropriate taxing authority upon receipt of such amount from the NESL. Any increase or decrease in the existing taxes or newly introduced taxes shall be to the account of the NESL. Each party is responsible for its own income taxes, corporate taxes and franchise taxes.</u></p>		
9	20	<p>10. Penalties: 10.1 The vendor will be required to sign Statement of Work (SOW) with NESL team for individual activity, module, functionality or artefact of the required IT Services before commencement of activity. Along with the work details, the SOW will also stipulate a reasonable estimate of person-month for an activity, module, functionality or an artefact. However, for the reasons attributed to vendor, if the assigned activity, module, functionality or an artefact</p>	<p>10. Penalties: 10.1 The vendor will be required to sign Statement of Work (SOW) with NESL team for individual activity, module, functionality or artefact of the required IT Services before commencement of activity. Along with the work details, the SOW will also stipulate a reasonable estimate of person-month for an activity, module, functionality or an artefact. However, for the reasons attributed to vendor, if the assigned activity, module, functionality or an artefact</p>	No change in tender terms.	N.A.

		<p>could not be completed in person-months as agreed in SOW, the vendor will deploy additional personmonth(or part thereof) to complete the said activity at no extra charges. In this case personnel deployed by vendor may be required to work on holidays, weekends and off hours based on exigencies.</p> <p>10.2 The delay in support, development / deployment arising out of conditions of Force Majeure and for the delay attributed to the NESL will not be considered for the purpose of calculating penalties.</p> <p>10.3 Any loss incurred by NESL due to penalties or other charges imposed by regulatory authorities, such as, IBBI , UIDAI and CCA for non-compliance by the application system of their requirements or for breach of any rule, for the reasons attributed to supplier, the same will be recovered in to-to from the amounts payable to the supplier. However, such recoveries, if any, will be limited to 10 % of the total amount of Column H of Phase 1 Section – V, i.e. the total estimated charges quoted by the bidder for Phase 1.</p>	<p>could not be completed in person-months as agreed in SOW, the vendor will deploy additional personmonth(or part thereof) to complete the said activity at no extra charges. In this case personnel deployed by vendor may be required to work on holidays, weekends and off hours based on exigencies.</p> <p>10.2 The delay in support, development / deployment arising out of conditions of Force Majeure and for the delay attributed to the NESL will not be considered for the purpose of calculating penalties.</p> <p>10.3 Any loss incurred by NESL due to penalties or other charges imposed by regulatory authorities, such as, IBBI , UIDAI and CCA for non-compliance by the application system of their requirements or for breach of any rule, for the reasons attributed to supplier, the same will be recovered in to-to from the amounts payable to the supplier. However, such recoveries, if any, will be limited to 10 5 % of the total amount of Column H of Phase 1 Section – V, i.e. the total estimated charges quoted by the bidder for Phase 1.</p>		
10	21	<p>14. Limitation of Liability: The liability of the supplier arising out of breach of any terms/conditions of the RFP / contract/work order and addendums/amendments thereto, misconduct, wilful default will be limited to 10 % of the total amount of Column H of Phase 1 Section – V, i.e. the total estimated charges quoted by the supplier for Phase 1.</p>	<p>14. Limitation of Liability: The liability of the supplier arising out of breach of any terms/conditions of the RFP / contract/work order and addendums/amendments thereto, misconduct, wilful default will be limited to 10 % of the total amount of Column H of Phase 1 Section – V, i.e. the total estimated charges quoted by the supplier for Phase 1. However, liability</p>	No change in tender terms.	N.A.

		<p>However, liability of the supplier in case of death/injury/damage caused to the personnel/property of NESL, due to/arising out of/incidental to any act/omission/default/deficiency of supplier, will be at actuals. Also, liability of supplier pertaining to claims/ demands by Government agencies, regulatory authorities or third party for losses, penalties, if any, arising in connection with Contract/order shall be limited to 10 % of the total amount of Column H of Phase 1 Section – V, i.e. the total estimated charges quoted by the supplier for Phase 1, provided the reasons for said claims/ demands are attributed to the supplier.</p>	<p>of the supplier in case of death/injury/damage caused to the personnel/property of NESL, due to/arising out of/incidental to any act/omission/default/deficiency of supplier, will be at actuals. Also, liability of supplier pertaining to claims/ demands by Government agencies, regulatory authorities or third party for losses, penalties, if any, arising in connection with Contract/order shall be limited to 10 % of the total amount of Column H of Phase 1 Section – V, i.e. the total estimated charges quoted by the supplier for Phase 1, provided the reasons for said claims/ demands are attributed to the supplier.</p> <p><u>Neither party shall be liable to the other for any special, indirect, incidental, consequential (including loss of profit or revenue, loss of data), exemplary or punitive damages whether in contract, tort or other theories of law, even if such party has been advised of the possibility of such damages.</u></p>		
11	21	<p>15. Termination: Validity of order will remain till fulfilment of all obligations pertaining to development and successful deployment of software including (but not limited to) providing comprehensive warranty, support and maintenance for the period stipulated in the Order. The successful bidder must acknowledge and agree that the activities of providing Services as per agreed terms for the development and deployment of IU software are of paramount importance and matter of immense reputation/pride to</p>	<p>15. Termination: Validity of order will remain till fulfilment of all obligations pertaining to development and successful deployment of software including (but not limited to) providing comprehensive warranty, support and maintenance for the period stipulated in the Order. The successful bidder must acknowledge and agree that the activities of providing Services as per agreed terms for the development and deployment of IU software are of paramount importance and matter of immense reputation/pride to nation and NESL. Hence timely</p>	Please refer corrigendum.	<p>Following text is added to the existing clause: "In the event of termination of contract/order by NESL, all amounts which are due and payable to the Vendor shall be paid by NESL within 30 days of termination."</p>

		<p>nation and NESL. Hence timely performance of all obligations is essence of the Order. Therefore, in case of substantial delay in providing the stipulated services, and /or defect/under or non-performance pertaining to the services /products supplied by the bidder, NESL will give written notice to the bidder requesting to set the things right within 60 days of notice. If bidder substantially fails to comply with the requirements, NESL shall have the right to terminate the order/s, provided such delay is solely and entirely attributable to the Bidder. The successful bidder may terminate the Service Agreement /Order by at least 30 days' written notice, in the event of non-payment of undisputed invoices for 90 days from the due date. NESL reserves the right to terminate the contract / cancel order with or without cause / reason by giving 60 days' notice to the successful bidder. Notwithstanding the contents of this clause, the provisions of clause 2, Section - II (Project Duration), Clause 6, Section - III (Inspection and Acceptance Criteria)) and Clause 8, Section - III (Penalties) shall be applicable.</p>	<p>performance of all obligations is essence of the Order. Therefore, in case of substantial delay in providing the stipulated services, and /or defect/under or non-performance pertaining to the services /products supplied by the bidder, NESL will give written notice to the bidder requesting to set the things right within 60 days of notice. If bidder substantially fails to comply with the requirements, NESL shall have the right to terminate the order/s, provided such delay is solely and entirely attributable to the Bidder. The successful bidder may terminate the Service Agreement /Order by at least 30 days' written notice, in the event of non-payment of undisputed invoices for 90 60 days from the due date. NESL reserves the right to terminate the contract / cancel order with or without cause / reason by giving 60 days' notice to the successful bidder. Notwithstanding the contents of this clause, the provisions of clause 2, Section - II (Project Duration), Clause 6, Section - III (Inspection and Acceptance Criteria)) and Clause 8, Section - III (Penalties) shall be applicable. <u>All amounts which are due and payable to the Vendor shall be immediately be paid by NESL in the event of termination of the agreement for any reason whatsoever.</u></p>		
12	22	<p>16. Indemnity: Supplier may please note that, NESL shall neither be the Employer of nor shall it be deemed to be the principal employer of any persons to be deployed by the supplier towards the</p>	<p>16. Indemnity: Supplier may please note that, NESL shall neither be the Employer of nor shall it be deemed to be the principal employer of any persons to be deployed by the supplier towards the</p>	Please refer corrigendum.	<p>The last paragraph of this clause is amended as given below: The supplier shall save, indemnify and hold harmless NESL from any third party</p>

	<p>service rendered and shall not in any manner be responsible for any act, omission or commissions by the supplier, the manpower deployed for this project or by his employees, in respect of any noncompliance of all or any labour and other laws statutory notifications, relevant rules and regulations applicable to the provision of Provident Fund and ESIC of the persons engaged by the supplier and no claim in the respect shall lie against NESL. The supplier shall keep indemnified NESL for any such claim raised by employees of the supplier. It may be expressly understood that the relationship between the parties hereto is as Principal – to – Principal and the supplier shall not be an agent of NESL for any purpose whatsoever, and shall not represent or hold himself out as such to any person/s. The supplier shall save, indemnify and hold harmless NESL from any third party Govt. Claims, losses, penalties, if any, arising in connection with this Contract.</p>	<p>service rendered and shall not in any manner be responsible for any act, omission or commissions by the supplier, the manpower deployed for this project or by his employees, in respect of any noncompliance of all or any labour and other laws statutory notifications, relevant rules and regulations applicable to the provision of Provident Fund and ESIC of the persons engaged by the supplier and no claim in the respect shall lie against NESL. The supplier shall keep indemnified NESL for any such claim raised by employees of the supplier. It may be expressly understood that the relationship between the parties hereto is as Principal – to – Principal and the supplier shall not be an agent of NESL for any purpose whatsoever, and shall not represent or hold himself out as such to any person/s. The supplier shall save, indemnify and hold harmless NESL from any third party Govt. Claims, losses, penalties, if any, arising in connection with this Contract. <u>The NESL will, during the period of the coverage of this assignment, indemnify and hold Supplier harmless from any loss, injury, claim or damage resulting from any death or injury to any person or property of Supplier arising out of the use or possession of the equipment or location of the NESL by Supplier or its personnel, unless caused by the negligence of Supplier personnel and the limitation or liability provided herein shall not apply to such loss, injury, claim or damages.</u></p>	<p>Govt. Claims, losses, penalties, arising in connection with this Contract, if the reasons for same are attributed to the Supplier and/or their employees.</p>
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			<p><u>NESL warrants to Supplier that the software, materials, and other assistance ('NESL materials') supplied by NESL to Supplier for the purpose of execution of the terms of the agreement are either NESL owned properties or are properties obtained by NESL under proper intellectual property licenses. NESL further warrants that the said software, material and other information, to be provided by NESL shall not infringe the intellectual property rights, proprietary rights or any other property rights of any party. If NESL materials supplied by NESL are found to infringe the intellectual property rights of any party, then NESL shall hold harmless and indemnified Supplier, against all claims and actions associated with such infringement, including without limitation the attorney fees spent by Supplier in defending such actions and claims, and any compensation that may be paid by Supplier to settle such claim either in satisfaction of a court decree or otherwise. This clause shall survive the termination of this agreement. The NESL will indemnify, defend and hold Supplier harmless from any loss, injury, claim or damage resulting from any death or injury to any person or property of Supplier arising out of the use or possession of the facilities/equipment or location of NESL by Supplier or its personnel, unless caused by the negligence of Supplier personnel and the limitation of liability provided herein shall not apply to such loss, injury, claim or damages.</u></p>		
13	33	<p>ANNEXURE – A- Covering Letter Date: To: MD & CEO National e-Governance Services Limited (NESL)</p>	<p>ANNEXURE – A- Covering Letter Date: To: MD & CEO National e-Governance Services Limited (NESL)</p>	No change in tender terms.	N.A.

	<p>5th Floor, Spencer Towers, 86, M.G. Road, Bengaluru – 560001 Phone: - 080 -25580360, 022- 22446619 e-mail:- iurfp@nesl.co.in Subject: Submission of the Bid for Development and Deployment of Information Utility Software Dear Sir, We, the undersigned, are pleased to offer to provide IT Services for Maintenance and Support of the existing IU Software and Design, Development, Installation, Integration and Configuration of additional features and functionalities to NESL, in response to your RFP. No: NESL/IU/2019/001, dated: 07-Aug, 2019. We are hereby submitting our bid for same, comprising Envelopes 1 to 4. We hereby declare that all the information and statements made in this bid are true and we accept that any misinterpretation contained in it, may lead to our disqualification. We agree to abide by all the terms and conditions of the RFP document. We would hold the terms of our proposal valid for 180 days as stipulated in the RFP document. We also undertake that we are not blacklisted or debarred from bidding process, by any Educational / R&D / Govt. Organization, as on date of submission of the bids and that there have been no regulatory actions initiated / pending against us as on the date of release of RFP. We also undertake that, we shall not use the technology developed under this project</p>	<p>5th Floor, Spencer Towers, 86, M.G. Road, Bengaluru – 560001 Phone: - 080 -25580360, 022- 22446619 e-mail:- iurfp@nesl.co.in Subject: Submission of the Bid for Development and Deployment of Information Utility Software Dear Sir, We, the undersigned, are pleased to offer to provide IT Services for Maintenance and Support of the existing IU Software and Design, Development, Installation, Integration and Configuration of additional features and functionalities to NESL, in response to your RFP. No: NESL/IU/2019/001, dated: 07-Aug, 2019. We are hereby submitting our bid for same, comprising Envelopes 1 to 4. We hereby declare that all the information and statements made in this bid are true and we accept that any misinterpretation contained in it, may lead to our disqualification. <u>Subject to deviations</u> We agree to abide by all the terms and conditions of the RFP document. We would hold the terms of our proposal valid for 180 days as stipulated in the RFP document. We also undertake that <u>to the best of our knowledge and based on the records available</u> we are not blacklisted or debarred from bidding process, by any Educational / R&D / Govt. Organization, as on date of submission of the bids and that there have been no regulatory actions initiated / pending against us as on the date of release of RFP <u>which may have adverse</u></p>		
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		<p>for any reverse engineering purposes, for a period of at least one year from the date of completion of project deliverables. We agree that the IPR of the technology developed will vest with NESL perpetually.</p> <p>We understand you are not bound to accept any bid you receive.</p> <p>The undersigned is authorised to sign this bid document. The authority letter to this effect is enclosed.</p> <p>Yours sincerely,</p>	<p>affect on the deliveries under this RFP.</p> <p>We also undertake that, we shall not use the technology developed under this project for any reverse engineering purposes, for a period of at least one year from the date of completion of project deliverables. We agree that the IPR of the technology developed will vest with NESL perpetually.</p> <p>We understand you are not bound to accept any bid you receive.</p> <p>The undersigned is authorised to sign this bid document. The authority letter to this effect is enclosed.</p> <p>Yours sincerely,</p>		
14	37	Annexure – D: Format of Bank Guarantee for EMD	Annexure – D: Format of Bank Guarantee for EMD	No change in tender terms.	N.A.
15		Annexure – E: Format of Bank Guarantee for Performance Security	<p>Annexure – E: Format of Bank Guarantee for Performance Security</p> <p><u>This Bank Guarantee issued by _____ Bank, on behalf of the Supplier in favor of NESL is in respect of the Contract/agreement dated _____.</u></p> <p><u>As communicated by Supplier on the date of execution of this Bank Guarantee an amount of Rupees _____ (Rupees _____ only) is outstanding and payable to Supplier by NESL, in respect of pervious contracts between Supplier and NESL.</u></p> <p><u>As communicated by Supplier on the date of execution of this Bank Guarantee, there are no outstanding disputes related to any pervious contracts between Supplier and NESL.</u></p> <p><u>Notwithstanding anything contained hereinabove:</u></p> <p><u>a) Our liability under this Bank</u></p>	Please refer corrigendum.	<p>The supplier may include following text in the Bank Guarantee format:</p> <p>“This Bank Guarantee issued by _____ Bank, on behalf of the Supplier in favor of NESL is in respect of the Contract/agreement dated _____.</p> <p>Notwithstanding anything contained hereinabove:</p> <p>a) Our liability under this Bank Guarantee shall not exceed and is restricted to Rs. _____ (Rupees _____ only)</p> <p>b) This Guarantee shall remain in force up to and including _____</p>

			<p><u>Guarantee shall not exceed and is restricted to Rs. _____ (Rupees _____ only)</u></p> <p><u>b) This Guarantee shall remain in force up to and including _____ (including claim period of three months)</u></p> <p><u>c) Unless the demand/claim under this guarantee is served upon us in writing before _____ all the rights of NESL under this guarantee shall stand automatically forfeited and we shall be relieved and discharged from all liabilities mentioned hereinabove.</u></p>		<p>(including claim period of one year)</p> <p>c) Unless the demand/claim under this guarantee is served upon us in writing before _____ all the rights of NESL under this guarantee shall stand automatically forfeited and we shall be relieved and discharged from all liabilities mentioned hereinabove."</p>
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Following clauses needs to be submitted with the proposal.

Sr. No	Suggestions by bidder	Response by NESL	Corrigendum
1	Lead Time: Supplier will commence work withinweeks of receiving the requisite advance payment.	Please refer corrigendum.	Following clause is added in Section – II, Para 2: "Supplier will commence work within 4 weeks of receiving of the order/ contract."
2	<p>Execution Infrastructure: The NESL will provide necessary and adequate infrastructure to enable Supplier to fulfill its commitment for the assignment. This will be applicable for each Supplier Consultant associated with the project and will be arranged for and provided at no cost to Supplier. The infrastructure will include:</p> <p>i. Office space;</p> <p>ii. Hardware and software;</p> <p>iii. Computer consumable including stationery, printer ribbons/toner, magnetic storage media such as floppy disks, tapes, cartridges, DATs;</p> <p>iv. Office stationery and</p>	Agreed, this arrangement is only for on-site.	N.A.

	<p>consumable;</p> <p>v. Secretarial assistance, if necessary at site;</p> <p>vi. Telephone, e-mail and fax facilities at site;</p> <p>vii. Photocopying assistance;</p> <p>viii. Meeting Room facilities including room equipped with a writing board, seating arrangements, computers/ terminals, overhead projector and consumables. (pl. mention if any additional infrastructure is to be provided).</p> <p>The above-mentioned infrastructure will be required for work to be carried out at the site of NESL during regular working hours. NESL shall make arrangements to provide for the same beyond these hours such as after regular working hours and on holidays (excluding only compulsory national holidays), whenever required.</p>		
3	<p>Deliverables: The deliverables will be as per the details of the deliverables provided in the accompanying Technical Proposal.</p>	No change in tender terms	N.A.
4	<p>Acceptance of Deliverables: NESL will carry out acceptance of deliverables (for the deliverables which are subject to acceptance procedure) as per the schedule presented in the accompanying Technical Proposal.</p> <p>The application software (if any) will be delivered/installed for acceptance to NESL as and when the same is ready for delivery. The actual Acceptance Testing of the software will be the responsibility of NESL. NESL will prepare the Acceptance Test data</p>	No change in tender terms.	N.A.

<p>along with the expected test results (consistent with the detailed specifications of the system and any change-request agreed in the documents) and keep it ready at least four (4) weeks in advance before the scheduled commencement of the Acceptance Testing of the software. The acceptance testing will be based on the test cases provided by NESL. Supplier will provide support for any clarifications during the Acceptance Testing of the system. Defects if any, observed by NESL, will be notified to Supplier in writing not later than two (2) weeks of delivery. Supplier will correct the defects that are a deviation from the baseline immediately following the acceptance, whichever is later. NESL will confirm acceptance in writing to Supplier. The NESL shall not withhold or delay the issuance of acceptance certificate of any of the deliverables, if the deliverables substantially meet the specifications or on account of any minor defects which have no material effect on the functionality of the deliverables. Notwithstanding the foregoing sentence, a deliverable shall be treated as accepted by NESL if the NESL (a) fails to provide the list of non conformities within two (2) weeks of delivery, (b) fails to notify the acceptance of the deliverables in terms of this clause within the period of two (2) weeks from delivery, or (c) starts using the deliverable in a live production environment (other than as part of agreed review and acceptance testing</p>		
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	<p>procedure, such as UAT). Reworking of defects shall be at the cost of Supplier provided the defects are for reasons solely and entirely attributable to the Supplier, in all other cases it shall be to the account of the NESL. Items reported as defects that are not deviations from the immediate previous accepted baseline will be reported again through fresh Change Request documents under the Change Management Procedure described herein. Items reported through the Change Management Procedure will be dealt with separately.</p>		
5	<p>Change Management Procedure: A change identified at any stage of the assignment which requires the deliverable to deviate from the then current baseline or the approved deliverable of the previous baseline to be modified, will be conveyed by the NESL to Supplier or vice-versa in the form of a Change Request document. The request for change will then be assessed by Supplier to evaluate its impact on feasibility, time schedules, technical requirements in consequence of the proposed change and cost. Supplier will present this assessment to the NESL for its approval within a reasonable time period. Supplier will incorporate the change after receiving the NESL's written approval. In case of delay in approval by the NESL, the baseline itself may undergo a change; this will mean a reassessment of the charges.</p> <p>Changes in the requirements like office space, hardware/software,</p>	Please refer corrigendum.	<p>Following text is added to para 3(Change Order), Section – III: Change Management Procedure: A change identified at any stage of the assignment which requires the deliverable to deviate from the then current baseline or the approved deliverable of the previous baseline to be modified, will be conveyed by the NESL to Supplier or vice-versa in the form of a Change Request document. The request for change will then be assessed by Supplier to evaluate its impact on feasibility, time schedules, technical requirements in consequence of the proposed change and man-month. Supplier will present this assessment to the NESL for its approval within a reasonable time period. Supplier will</p>

	<p>and tools etc. during the execution of the assignment will be conveyed by Supplier to the NESL. These will be evaluated jointly by the NESL and Supplier and will be provided by the NESL at no cost to Supplier.</p>		<p>incorporate the change after receiving the NESL's written approval. In case of delay in approval by the NESL, the baseline itself may undergo a change; this will mean a reassessment of the charges.</p> <p>Changes in the requirements (w.r.t baseline requirements to be informed by the bidder) like office space, hardware/ software, and tools etc. during the execution of the assignment will be conveyed by Supplier to the NESL. These will be evaluated jointly by the NESL and Supplier and will be provided by the NESL at no cost to Supplier, only for on-site activities and not off-site.</p>
6	<p>Reimbursement of Tax/Levy Supplier shall be reimbursed for payment of any statutory duty/tax/levy including interest and/or new taxes or an increase in the rates of existing taxes or any other sum, if any payable in respect of any sales tax and/or any other state or central levy. This will apply retrospectively, if so applicable upon Supplier.</p>	No change in tender terms.	N.A.
7	<p>Intellectual property rights: All intellectual property rights in the software, all tools, processes, software, utilities and methodology including any Supplier's proprietary products or components thereof any development carried out by Supplier thereto in the course of</p>	No change in tender terms.	N.A.

<p>providing services hereunder, including customisation, enhancement, interface development etc. shall remain the exclusive property of Supplier and NESL shall not acquire any right title or interest of any nature therein except to the extent provided herein. Supplier shall however grant in favour of NESL the right and non exclusive, non transferable, perpetual and irrevocable license to use the software for the purposes agreed hereunder. The foregoing license does not authorizes NESL to (a) separate Supplier pre-existing IP from the deliverable/software in which they are incorporated for creating a stand alone product for marketing to others; (b) independently sell, lease, exchange, mortgage, pledge, license, sub license, assign or in any other way convey, transfer or alienate the Supplier pre-existing IP in favour of any person (either for commercial consideration or not (including by way of transmission), and/or (c) except as specifically and to the extent permitted by the Supplier in the relevant Statement of Work, reverse compile or in any other way arrive at or attempt to arrive at the source code of the Supplier pre-existing IP.</p> <p>All the Intellectual Property Rights (IPR) in the third party software used in providing services including those forming part of or incorporated into the deliverables shall remain with the respective third party owners/ Supplier's licensor and NESL shall have user rights in accordance</p>		
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	with end user license agreement (EULA) as applicable to use of such software.		
8	<p>Warranty:</p> <p>Supplier shall warrant that the delivered software meets the requirements as specified in the detailed Specifications. This warranty shall remain valid for three (3) months after the acceptance of the software by the NESL or three (3) months after the delivery of the software, whichever is earlier.</p> <p>NESL shall promptly notify Supplier in writing of any 'defect' in the software arising due to the reasons solely and entirely attributable to Supplier under this warranty. Upon receipt of such notification, Supplier shall remove the 'defect' in the application software.</p> <p>The scope of the warranty shall be limited only to correction of any bugs that were left undetected during acceptance testing by the NESL. Warranty shall not cover any enhancements or changes in the application software, carried out after acceptance testing. This warranty is only valid for defects against approved Specifications. The above mentioned warranty shall also not apply if there is any (i) combination, operation, or use of some or all of the deliverables or any modification thereof furnished hereunder with information, software, specifications, instructions, data, or materials not approved by Supplier and operation of the</p>	No change in tender terms.	N.A.

	<p>deliverables on incompatible hardware not recommended by Supplier; (ii) any change, not made by Supplier, to some or all of the deliverables; or (iii) if the deliverables have been tampered with, altered or modified by the NESL without the written permission of Supplier; or (iv) defects in components or materials provided to Supplier by NESL in connection with the preparation of the deliverable.</p> <p>In case of breach of this warranty, NESL's exclusive remedy will be to obtain (1) the re-performance of the service or the correction or replacement of any service deliverable that provides substantially similar functionality or (2) if both parties mutually determines that such remedies are not practicable, a refund of the fees allocable to that part of the deliverable will be due to the NESL if already paid by the NESL.</p> <p>EXCEPT AS SET FORTH IN THIS AGREEMENT, SUPPLIER MAKES NO WARRANTIES TO NESL, EXPRESS OR IMPLIED, WITH RESPECT TO ANY SERVICES OR DELIVERABLES PROVIDED HEREUNDER, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ALL SUCH OTHER WARRANTIES ARE HEREBY DISCLAIMED BY THE SUPPLIER.</p>		
9	<p>Additional Support and Services: In case the NESL requires any additional support in execution of its tasks in respect of the assignment, it shall be provided to them by Supplier on</p>	No change in tender terms.	N. A.

	availability-basis at its then current market rate.		
10	Travel and Related Expenses: Should the assignment require any travel by any Supplier expert outside their respective base location(s), the NESL will provide to-and-fro airfare, board-and-lodging expenses (or, arrangements for the same), as well as local transportation for all such travels.	No change in tender terms.	N.A.
11	Cost Escalation: Supplier will monitor the cost components related to this assignment. At each milestone and at the time of periodic reviews, in case of variances against its budget for reasons not attributable to Supplier like delays in inputs/approvals by the NESL, non-availability of facilities at the NESL, increase in the scope of the agreed Change-Requirements or increase in the NESL's Implementation support requirements etc., Supplier will bring this to the attention of the NESL. All such cost increases will be discussed and mutually agreed upon. Supplier will then raise invoices, payment period and other conditions for such invoices, which will be similar to those for payments laid out in this proposal.	No change in tender terms.	N.A.
12	Confidentiality: Both parties agree that they may, in the course of their business relationship with the other, acquire or be exposed to	Please refer corrigendum.	In Section – III, at Sr. No 19, the following para is added: "Confidentiality: Both parties agree that they

<p>information that is proprietary or confidential to the other party, its affiliates or its or their respective NESLs. Both parties undertake, to hold all such information in strictest confidence and not to disclose such information to third parties nor to use such information for any purpose whatsoever save as may be strictly necessary for the performance of the assignment as mentioned in this proposal. The term "Confidential Information" as used herein means any information or documents disclosed by one party to the other party orally, and which is reduced to writing within a period of 3 days of the disclosure or in writing or including but not limited to any written or printed documents, samples, model, technical data/know-how, drawings, photographs, specifications, standards, manuals, reports, formulae, algorithms, processes, information, lists, trade secrets, computer programs, computer software, computer data bases, computer software documentation, quotations and price lists, research products, inventions, development, processes, engineering techniques, strategies, customers, internal procedures, employees and business opportunity and clearly identified and marked as "Confidential Information". The data contained herein shall not be disclosed, duplicated, used in whole or in part for any purpose other than to evaluate the proposal provided that, a contract is awarded to this proposal as a</p>		<p>may, in the course of their business relationship with the other, acquire or be exposed to information that is proprietary or confidential to the other party, its affiliates or to clients of NESL. Both parties undertake, to hold all such information in strictest confidence and not to disclose such information to third parties nor to use such information for any purpose whatsoever save as may be strictly necessary for the performance of the assignment as mentioned in this proposal. The term "Confidential Information" as used herein means any information, data, documents etc. disclosed by one party to the other party orally, or including but not limited to any written or printed documents, samples, model, technical data/know-how, drawings, photographs, specifications, standards, manuals, reports, formulae, algorithms, processes, information, lists, trade secrets, computer programs, computer software, computer data bases, computer software documentation, quotations and price lists, research products, inventions, development, processes, engineering techniques, strategies, customers,</p>
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<p>result of, or in connection with the submission of this data. Both the parties shall have the right to duplicate, use or disclose the data to the extent provided in the contract. This confidentiality restrictions shall be for the term of the resultant contract and for a period of two years thereafter. This restriction does not limit the right to use information contained in the data if it:</p> <ul style="list-style-type: none"> a. Is obtained from another source without restriction. b. Is in the possession of, or was known to, the receiving party prior to its receipt, without an obligation to maintain confidentiality; c. becomes generally known to the public without violation of this Proposal; d. is independently developed by the receiving party without the use of confidential Information and without the participation of individuals who have had access to confidential information; e. is required to be provided under any law, or process of law duly executed. 		<p>internal procedures, employees and business opportunity and also any information clearly identified and marked as "Confidential Information". The data contained herein shall not be disclosed, duplicated, used in whole or in part for any purpose other than to evaluate the proposal provided that, a contract is awarded to this proposal as a result of, or in connection with the submission of this data. Both the parties shall have the right to duplicate, use or disclose the data to the extent provided in the contract. This confidentiality restrictions shall be for the term of the resultant contract and for a period of two years thereafter. This restriction does not limit the right of the either party to use information contained in the data if it:</p> <ul style="list-style-type: none"> a. Is obtained from another source without restriction. b. Is in the possession of, or was known to, the receiving party prior to its receipt, without an obligation to maintain confidentiality; c. becomes generally known to the public without violation of this Proposal; d. is independently developed by the receiving party without the use of confidential Information
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			and without the participation of individuals who have had access to confidential information; e. is required to be provided under any law, or process of law duly executed.
13	Non-employment: The NESL will neither offer to employ nor employ, directly or otherwise, any Supplier employee, associated for the purpose of, or with the assignment, during the period between the date of this proposal and two years from the completion of the assignment arising here from.	No change in tender terms.	N.A.
14	Arbitration: In the event of a dispute or difference of any nature whatsoever between Supplier and the NESL during the course of the assignment arising as a result of this proposal, the same will be referred for arbitration to a Board of Arbitration. Such Arbitration shall be governed by the provisions of the Indian Arbitration and Conciliation Act 1996. This Board will be constituted prior to the commencement of the arbitration and will comprise of two arbitrators and an umpire. Supplier and the NESL will each nominate an arbitrator to the Board and these arbitrators will appoint the umpire. Arbitration will be carried out in Delhi	No change in tender terms.	N.A.
15	Governing law: This proposal shall be governed by and construed in accordance with Laws of India and the parties submit to the exclusive jurisdiction of the courts	No change in tender terms.	N.A.

	in Delhi		
16	<p>Termination: The Agreement resulting from this proposal may be terminated:</p> <p>(a) by either party by giving the other party not less than ninety (90) days written notice of termination;</p> <p>(b) forthwith if either party commits any material breach of any term of this contract and which in the case of a breach capable of being remedied shall not have been remedied within thirty (30) working days of written notice to remedy the same;</p> <p>(c) forthwith by either party if the other party shall convene a meeting of its creditors or if a proposal is made for a declaration as insolvent or a proposal for any other composition scheme or arrangement (or assignment for the benefit of its creditors), or if a trustee receiver, administrative receiver or similar officer is appointed in respect of all or any part of the business assets of the other party or if an order is made or a resolution is passed for the purpose of the winding-up of the other party or for the making of an administration order (otherwise than for the purpose of amalgamation or reconstruction);</p> <p>(d) by either party pursuant to Force Majeure.</p> <p>Termination shall be without prejudice to any other rights or remedies a party may be entitled to hereunder or at law and shall not affect any accrued rights or</p>	No change in tender terms.	N.A.

	<p>liabilities of either party nor the coming into force or continuation in force of any provision hereof which is expressly intended to come into force or continue in force on or after such termination.</p> <p>In the event of this assignment being terminated, the NESL shall be liable to make payments of all the amount due under this assignment for which services have been rendered by Supplier's Consultant's. Forthwith on the expiry or earlier termination of this agreement, each party shall, return to the other party all documents and materials, belonging to the other party with regard to this assignment, or shall at the option of the disclosing party destroy all documents or materials in connection with this assignment.</p>		
17.	Notices:	Bidder may give details in their proposal such as name and address to whom the notices have to be sent.	N.A.
18	<p>Waiver:</p> <p>No forbearance, indulgence or relaxation by any Party at any time to require performance of any provision of this Proposal shall in any way affect, diminish or prejudice the right of such party to require performance of that provision and any waiver by any party or any breach of any provisions of this Proposal shall not be construed as a waiver or an amendment of the provisions itself, or a waiver of any right under or arising out of this Proposal.</p>	No change in tender terms.	N.A.

19	<p>Assignment: Neither Party shall be entitled to assign or transfer all or any of its rights, benefits and obligations under this proposal without the prior written consent of the other Party</p>	No change in tender terms.	N.A.
20	<p>Nonexclusively: Supplier shall be free to do similar business either for itself or for any other party or offer similar services to any third parties but without in any way affecting the services agreed to be offered by Supplier under this Proposal.</p>	No change in tender terms.	N.A.
21	<p>Independent Relationship: This Proposal is not intended to create a relationship such as a partnership, joint venture, agency, or employment relationship. Neither party may act in a manner, which expresses or implies a relationship other than that of independent party nor bind the other party</p>	No change in tender terms.	N.A.
22	<p>Modification: This proposal may be modified only by an amendment executed in writing by a duly authorised representative for each party.</p>	No change in tender terms.	N.A.
23	<p>Publicity: Neither party shall publicize any information pertaining to this assignment or the other party without seeking the prior written consent of the other party.</p>	No change in tender terms.	N.A.
24	<p>Entire Understanding: This Proposal together with the Schedules, Annexure and Exhibits hereto and executed by the parties hereto constitutes the entire understanding between the parties hereto with respect to the subject matter hereto and supercedes and cancels all</p>	No change in tender terms.	N.A.

	<p>previous negotiations thereof. To the extent permitted by Applicable Law, a party is not liable to another party in contract or tort or in any other way for a representation or warranty that is not set out in this Agreement.</p>		
25	<p>Tata Code of Conduct: The business activities of the Supplier are self-regulated by the "Tata Code of Conduct". The NESL undertakes that it will endeavor to promptly report any violation or potential violation of the Code by any person to the Local Ethics Counselor or the Principal Ethics Counsellor or the CEO of Supplier. Supplier, in turn, undertakes that it will maintain confidentiality of all communications received.</p>	No change in tender terms.	N.A.
26	<p>Survival: The clauses of this proposal which by their nature are intended to survive shall so survive the termination/expiry of this proposal.</p>	No change in tender terms.	N.A.
27	<p>Termination in case of default and non payment of fees: Supplier may terminate this Agreement for cause if NESL materially breaches this Agreement, provided Supplier gives NESL notice of such breach and it remains uncured after 30 days following notice. If any amount due and payable by NESL under the Agreement is more than 30 days overdue; and there is no dispute between NESL and Supplier in relation to that amount, Supplier may issue to NESL a notice that payment is overdue. If NESL fails to pay Supplier within 7 days after the date of such notice, Supplier may by a further notice to NESL</p>	No change in tender terms.	N.A.

	terminate the Agreement or at its election withdraw services or stop performance of its obligations until payment is made.		
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